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2  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF WASHINGTON  
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6  
7 LINDA KABRICH, an individual )  
8 Plaintiff, )

9 vs. )

10 ALLSTATE PROPERTY AND )  
11 CASUALTY INSURANCE )  
12 COMPANY d/b/a ALLSTATE )  
13 INSURANCE COMPANY d/b/a )  
14 ALLSTATE NORTHWEST )  
15 PROPERTY, a foreign )  
16 corporation licensed to do )  
business in the State of )  
Washington, )  
Defendant, )

NO. CV-12-3052-LRS

ORDER RE DEFENDANT'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT

17  
18 **I. BACKGROUND**

19 On December 5, 2010, a water pipe burst inside the home of plaintiff Linda  
20 Kabrich. ECF No. 68 at 2. Plaintiff submitted an insurance claim to defendant  
21 Allstate on December 9, 2010. ECF No. 65 at 1. At an initial meeting with Plaintiff,  
22 an adjuster from Allstate explained that coverage for freezing losses may exclude  
23 damages caused by owner negligence. ECF No. 72 at 2. Some of Plaintiff's  
24 belongings were subsequently taken to a storage facility. It also appears that  
25 Plaintiff's policy imposed a one-year limit on her right to file suit. ECF No. 66  
26 Exhibit C at 2. By November 30, 2011, the parties had not come to an agreement  
27 concerning the total value of the loss Plaintiff had sustained, and so Plaintiff sent  
28 Allstate a letter notifying them that she had retained counsel and would file suit. *Id.*

**ORDER - 1**

1 On December 2, 2011 Plaintiff filed suit in State Superior Court alleging that  
2 Defendant failed to pay Plaintiff for the losses she incurred as a result of water  
3 damage, for unfair trade practices pursuant to RCW 48.30.010, claims under WAC  
4 284-30-330, -360, -370, -380, and for additional damages incurred as a result of  
5 Defendant's loss mitigation steps included the erection of sealed vapor barriers. ECF  
6 No. 2 Exhibit C. This case was removed under diversity jurisdiction on April 13,  
7 2012 by Defendant; Plaintiff is a citizen of the State of Washington, and Defendant  
8 is a citizen of the State of Illinois. ECF No. 1. Defendant has filed a motion for  
9 partial summary judgment requesting that the court dismiss Plaintiff's Insurance Fair  
10 Conduct Act (IFCA) claim and Plaintiff's claim for attorney's fees. (ECF No. 65).

## 11 **II. STANDARD**

### 12 **a. Summary Judgment Standard**

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14 The purpose of summary judgment is to avoid unnecessary trials when there  
15 is no dispute as to the facts before the court. *Zweig v. Hearst Corp.*, 521 F.2d 1129  
16 (9th Cir.), *cert. denied*, 423 U.S. 1025, 96 S.Ct. 469 (1975). Under Fed. R. Civ. Pro.  
17 56, a party is entitled to summary judgment where the documentary evidence  
18 produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby,*  
19 *Inc.*, 477 U.S. 242, 247, 106 S.Ct. 2505 (1986); *Semegen v. Weidner*, 780 F.2d 727,  
20 732 (9th Cir. 1985). If a genuine dispute over a fact that might affect the outcome of  
21 the suit under the governing law exists, then summary judgment is precluded.  
22 *Anderson*, 477 U.S. at 248.

23  
24 In order to survive summary judgment on her IFCA claim Plaintiff must  
25 establish a violation of the IFCA regulations by unreasonably denying coverage,  
26 unreasonably denying payment of benefits, or possibly violating one of the five WAC  
27 rules. To survive summary judgment on her claim for attorney's fees, Plaintiff must  
28 establish that Defendant has unreasonably withheld payment of benefits.

**b. Unreasonable Denial of Coverage**

Plaintiff asserts that Defendant has not accepted coverage for her loss, and that this is equivalent to having denied her coverage. Plaintiff has provided no evidence, however, that Defendant has unreasonably denied her claim for coverage. Defendant asserts that coverage was accepted at the time Plaintiff's claim was submitted. ECF No. 65 at 4. Indeed, Defendant has made numerous payments on Plaintiff's claim. ECF No. 72 at 1. Plaintiff has provided no evidence to indicate coverage was not accepted. At most, Plaintiff has indicated that Defendant reserved its right to deny coverage in accordance with the terms governing Plaintiff's policy at some point in the future. ECF No. 68 at 3. Finally, during oral argument, Defense counsel conceded that coverage exists. Accordingly, the Court cannot find that there has been an unreasonable denial of coverage at this juncture.

**c. Unreasonable Denial of Payment of Benefits**

Plaintiff claims that Defendant has unreasonably denied paying her benefits. ECF No. 68 at 6. As noted above, Defendant has made numerous payments on Plaintiff's claim. ECF No. 72 at 1. Furthermore, Plaintiff has not indicated what payments have not yet been made. Defendant claims that Plaintiff filed suit before Defendant was able to complete an evaluation of Plaintiff's damages, and that to date, Plaintiff still has not yet provided a complete inventory of her damaged items. *Id.* at 2. To the extent coverage is even in dispute, Defendant has acknowledged that coverage is not an issue and exists pending proof of Plaintiff's losses, which proof has been impossible to ascertain.

Plaintiff argues that she has failed to provide a complete inventory because she has been denied access to the location where her items have been stored. ECF No. 2 Exhibit C at 2. Again however, Plaintiff has provided no substantive evidence to support this claim. Defendant states that Allstate has been unable to verify Plaintiff's

1 remaining claims based on denial of access to the storage containers and a warehouse  
2 purportedly holding Plaintiff's allegedly damaged personal property. Accordingly,  
3 based on the present state of the record, the undersigned is unable to rule on the  
4 present motion until the close of discovery. However, it cannot be said that Plaintiff  
5 has been denied coverage based on the payment of benefits Plaintiff has already  
6 received. The court is unable to determine, however, which outstanding benefits  
7 claimed have not yet been paid and Plaintiff has not, to date, provided sufficient  
8 information to permit the Defendant to reasonably adjust her remaining claim(s).

9  
10 **III. Conclusion**

11 Based on the present state of the record, the court cannot rule on the merits of  
12 Defendant's motion. Defendant has not shown it will suffer any prejudice by  
13 deferring a ruling until all relevant facts are before the court.

14 Accordingly,

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16 **IT IS ORDERED** that Defendant's motion for Partial Summary Judgment,  
17 **ECF No. 65**, is **VACATED**, pending the close of discovery, and is subject to re-  
18 noting at an appropriate time upon request of the Defendant.

19 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
20 order.

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22 **DATED** this 30<sup>th</sup> day of August, 2013.

23 *s/Lonny R. Suko*

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LONNY R. SUKO  
United States District Judge